

MEMORANDUM
Fair Political Practices Commission

To: Chairman Getman, Commissioners Downey, Knox, Scott and Swanson

From: Margaret Figeroid, Political Reform Consultant, Legal Division
Carla Wardlow, Chief, Technical Assistance Division
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Date: May 23, 2001

Subject: Proposition 34—New Online/Electronic Disclosure Reports;
Emergency Adoption of Regulations 18539, 18539.2, and 18550

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On November 7, 2000, the voters approved Proposition 34, which significantly amended the Political Reform Act (“Act”).¹ Among other things, Proposition 34 established three new campaign disclosure reports that must be filed online or electronically with the Secretary of State. These include two 24-hour reports for contributions and independent expenditures made during an election cycle and a 48-hour report that requires the disclosure of information related to certain communications made within 45 days of an election.

To implement the new reporting provisions, staff has drafted three regulations that specify the content of the electronic reports. These regulations were discussed at the May 7, 2001, Commission meeting. Staff recommends the Commission adopt the proposed regulations now on an emergency basis. This will give the Secretary of State time to make any necessary changes to the Cal-ACCESS program and allow reporting under these provisions in connection with the March 2002 election.²

24-Hour Online Disclosure of Contributions and Independent Expenditures Made During an Election Cycle

Section 85309 requires 24-hour online or electronic reporting of contributions of \$1,000 or more received during an election cycle³ by candidates for elective state offices and state ballot measure committees that must file their campaign disclosure reports electronically under section 84605. The content of the report is specified in section

¹ Government Code Sections 81000-91014. All statutory references are to the Government Code unless otherwise noted. Commission Regulations appear at Title 2, Sections 18109-18997 of the California Code of Regulations. All regulatory references are to Title 2 of the California Code of Regulations.

² Staff of the Secretary of State’s office supports the emergency adoption of regulations by the Commission to implement these new Proposition 34 reports.

³ “Election cycle” means the period of time commencing 90 days prior to an election and ending on the date of the election. (Section 85204.)

84203, the current statute requiring 24-hour reporting of “late contributions.” Emergency Regulation 18539 has been drafted to implement section 85309.

Section 85500 requires 24-hour online or electronic reporting of independent expenditures of \$1,000 or more made during an election cycle to support or oppose a candidate for elective state office, which are made by committees that must file their campaign disclosure reports electronically under section 84605. The content of the report is specified in section 84204, the current statute requiring reporting of “late independent expenditures.” Emergency Regulation 18550 has been drafted to implement section 85500.

Prior to passage of Proposition 34, the Act only required 24-hour reporting of “late contributions” and “late independent expenditures.” (See sections 82036, 82036.5, 84203 and 84204.) These reports are filed during the last 16 days prior to an election to inform the public about contributions and independent expenditures of \$1,000 or more made to support or oppose a candidate or measure being voted on in the election. The Act does not require that the late reports be filed on a particular form. However, for the convenience of filers, the Commission approved use of Form 496—Late Independent Expenditure Report and Form 497—Late Contribution Report. In developing the Cal-ACCESS program, the Secretary of State used these forms for electronic disclosure of late contributions and late independent expenditures.

Emergency Regulations 18539 and 18550 state that reports filed under sections 85309 and 85500, respectively, must contain the information prescribed in FPPC Forms 496 and 497, the current late reporting forms. Subdivision (b) of each regulation also specifically states that the new reports need not be filed on paper.

It is anticipated that once these regulations are in place and the Secretary of State has made any necessary format changes, existing Cal-ACCESS Forms 496 and 497 will be replaced by the Forms E-496 and E-497. The “E-forms” may be used to file all 24-hour reports, including the 16-day late contribution and late independent expenditure reports, which are still required under the Act. Subdivision (c) of the regulations clarifies that the 16-day late reports must still be filed on paper pursuant to sections 84203 and 84204. (See section 84605(i).)

48 Hour Reporting When Making Communications Under Section 85310

Section 85310 requires online or electronic reporting by any person who makes a payment or a promise of payment totaling \$50,000 or more for communications that clearly identify a candidate for elective state office, but do not expressly advocate the candidate’s election or defeat. The report must be filed within 48 hours of making the payment or promise of payment if the communication is made within 45 days of an election. The content of the report is specified in section 85310. Emergency Regulation 18539.2 has been drafted to implement this section.

At the May 7, 2001, meeting, the Commission interpreted Section 85310 as contemplating the filing of an online or electronically filed report only, with no paper form required. This is reflected in subdivision (a) of the regulation. The specific content of the report is set out in section 85310. In May, staff recommended that information not expressly listed in the statute be required in order to make the report more meaningful to the public and easier for the Secretary of State to process. There was no objection at the meeting, and this supplementary information has been incorporated into the regulation in subdivisions (a)(4)-(7) and (c)(5).

Campaign reports and statements must be verified. Section 81004(a) provides:

“All reports and statements filed under this title shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his knowledge it is true and complete.”

Since Section 85310 requires that a *report* be filed, it must be verified. Unlike all other campaign reports, those filed pursuant to Section 85310 will only be filed online or electronically and, therefore, there will be no paper report containing the signature of the filer verifying the content of the report.

The Secretary of State’s Cal-ACCESS system currently has no mechanism in place to allow digital-type signatures to be affixed to an electronically filed campaign statement or report. For purposes of other electronically filed campaign reports, Section 84604(d) and 84605(h) state that “[i]t shall be presumed that online or electronic filers file under penalty of perjury.” However, sections 84604 and 84605 apply only to reports filed pursuant to Chapters 4 and 6 of the Act, not reports filed pursuant to Chapter 5.

At the May 7 meeting, the Commission requested that staff investigate the Franchise Tax Board (“FTB”) acceptance of electronically filed tax returns and its use of a verification method whereby the filer, after preparing the tax form and before transmitting it to the FTB, signs and dates a form prescribed by the FTB verifying the content of the return. The form serves as an authorization to transmit the tax return electronically to the FTB and also as a record of filing and verification of the content of the return. The original signed form must be retained by the filer for four years and may be required to be furnished to the FTB upon request. (See Revenue and Taxation Code sections 18621 and 18621.5.)

Pursuant to the Commission’s direction in May, staff has drafted language in Regulation 18539.2, subdivisions (b), (d) and (e) to provide a means for verification of the electronically filed report under Section 85310 similar to that used by the FTB.

Subdivision (b) states the Secretary of State will provide a mechanism for the filer to acknowledge the report has been properly verified pursuant to this regulation. It is contemplated that this information will be available for public viewing via the Cal-ACCESS program, along with the other required information in the report.

Subdivision (d) and (e) set forth the requirements for proper verification, including who must file and the exact language a filer must use to verify the report. Subdivision (e)(2) is optional language setting forth the appropriate timing of the verification. The original verification should be signed, dated and verified after the report has been prepared and before it is transmitted to the Secretary of State. This will ensure that all data/information submitted in the report has been inspected before transmission to the filing officer.

Subdivision (f) is presented as optional language which advises the filer the electronically filed report will be considered complete and filed if all the conditions in the regulation are met.

Staff recommends the Commission adopt Regulations 18539, 18539.2, and 18550 on an emergency basis.